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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/900,057	07/06/2001	Fayad Z. Sheabar	4532660/29930	7817

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Suite 2500  
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12/14/2004

EXAMINER

LEITH, PATRICIA A

ART UNIT	PAPER NUMBER
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1654

DATE MAILED: 12/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/900,057

Applicant(s)

SHEABAR ET AL.

Examiner

Patricia Leith

Art Unit

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-18 is/are rejected.
- 7) ☒ Claim(s) 2 and 3 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Claims 1-18 are pending in the application.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a previous Office Action.

### ***Claim Rejections - 35 USC § 103***

Claims 1, 4-5, 7-12 and 17-18 are rejected under 35 USC 103(a) as being unpatentable over Borud et al. (EP 0487 480 A2).

The teachings of Borud were keenly described in the previous Office Action. Borud did not teach the addition of an organic acid into the extraction mixture.

One of ordinary skill in the art would have been motivated to substitute hydrochloric acid for an organic acid because the ordinary artisan would have had a reasonable expectation that an organic acid and hydrochloric acid would act as functional equivalents in lowering the pH of the extraction medium. Applicant argues that formic acid was added in order to reduce oxidation as well as lower pH. It is noted that the claims do not state 'formic acid' but only states 'organic acid'.

Claim 6 is rejected under 35 USC 103(a) as being unpatentable over Borud as applied to claims 1, 4-5 and 7-12 above and further in view of Pearce et al. (1983) or Bryant et al. (1976) for the reasons of record.

Applicant's arguments pertaining to this rejection were based upon the contention that the new limitation in claim 1 which reads 'organic acid' was sufficient to overcome the prior art rejection. This argument is essentially moot since the inclusion of 'organic acid' does not overcome the prior art.

Claims 13-16 are rejected under 35 USC 103(a) as being unpatentable over Borud as applied to claims 1, 4-5 and 7-12 above, and further in view of Ryan et al. (WO 99/01474).

Again, Applicant's arguments pertaining to this rejection were based on the contention that the new limitation in claim 1 which states 'organic acid' was sufficient to overcome the prior art rejection. This argument is essentially moot since the inclusion of 'organic acid' does not overcome the prior art.

Claims 2 and 3 remain free of the prior art however, are objected to for being dependant upon a rejected claim.

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From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

No Claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia Leith whose telephone number is (571) 272-0968. The examiner can normally be reached on 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on (571) 272-0974. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patricia Leith  
Primary Examiner  
Art Unit 1654

12/10/04

A handwritten signature in cursive script, appearing to read "Patricia Leith", written in black ink.